

RCK:jenkins road

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Northern Division

UNITED STATES OF AMERICA,
Plaintiff,

v.

5 JENKINS ROAD, etc.,
Defendant.

and

WAYNE M. BYERLY,
Claimant,

and

GMAC MORTGAGE CORPORATION,
Claimant.

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Civil No. L-02-3697

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UNCONTESTED MOTION FOR AMENDED FINAL ORDER OF FORFEITURE

The United States of America, by and through undersigned counsel, hereby requests that the Court issue an amended order of forfeiture to address all unknown third party interests and to allow the forfeiture of substitute assets in lieu of forfeiture of the defendant real property, and in support of such motion states the following:

1. By Order dated February 16, 2006, the Court granted summary judgment in favor of the United States and, thereby, forfeited the defendant real property to the United States.

2. The defendant property is real property titled to Wayne M. Byerly at the time that this case was initiated. GMAC Mortgage

Corporation holds a mortgage pertaining to the defendant real property.

3. On December 6, 2004, notice of the pendency of this case was published in the Cecil Whig, a newspaper of general circulation in the Elkton, Maryland, area pursuant to Rule C of the Supplemental Rules For Certain Admiralty and Maritime Claims. A copy of the advertising certification is attached hereto as **Exhibit A.**

4. No claimant, other than Wayne Byerly and GMAC Mortgage, came forward within the time allotted by law for the filing of claims, which is within thirty (30) days after the publication of the notice of the pendency of the proceedings. 18 U.S.C. section 983(a)(4)(A); Rule C(4) and (6) of the Supplemental Rules for Certain Admiralty and Maritime Claims.

5. Because the initial order granting summary judgment did not address the potential third party interests in accordance with the Admiralty Rules, the government requests an amended order that addresses those interests as well as the interests of the claimant.

6. Also, by agreement dated June 16 through August 28, 2006, the government, GMAC Mortgage, and Wayne Byerly reached a settlement whereby Wayne Byerly will provide the government with a check in the amount of \$208,000 and the government will release the defendant property from forfeiture. A copy of the agreement is annexed hereto as **Exhibit B.** Byerly has also agreed that the GMAC

Mortgage shall continue in full force and effect until satisfied. Thus, the agreement addresses all of the pertinent interests in the case. Consequently, the government requests an amended order that also forfeits the substitute defendant check and disposes of the defendant real property in accordance with the settlement agreement.

7. According to paragraph 1 of the agreement, the parties agreed that a copy of the agreement should be submitted to the Court in support of this motion for an amended order of forfeiture.

WHEREFORE, the United States of America respectfully requests that the Court enter an amended order of forfeiture that conforms with the draft order submitted herewith for the convenience of the Court.

Respectfully submitted,

Rod J. Rosenstein
United States Attorney

//s//
Richard C. Kay
Assistant United States Attorney
36 South Charles Street
Fourth Floor
Baltimore, Maryland 21201
(410) 209-4850

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 8, 2006, a copy of the foregoing Uncontested Motion for Amended Final Order of Forfeiture was sent to C. Thomas Brown, Esquire, 205 East Main Street, Elkton, Maryland 21921, and to Mark Hardcastle, Esquire, GMAC Mortgage.

//s//
Richard C. Kay
Assistant United States Attorney